

1
2 **IN THE UNITED STATES DISTRICT COURT**
3 **FOR THE NORTHERN DISTRICT OF TEXAS**

4 **SHARON HUNT,** §
5 §
6 Plaintiff, § **Civil Action No.**
7 §
8 **v.** §
9 § **Jury Trial Demanded**
10 **DATA SEARCH, INC.,** §
11 §
12 Defendant. §
13 §

14 **COMPLAINT**

15 SHARON HUNT (“Plaintiff”), by her attorneys, KIMMEL &
16 SILVERMAN, P.C., allege the following against DATA SEARCH, INC.
17 (“Defendant”):

18 **INTRODUCTION**

19
20 1. Plaintiff’s Complaint is based on the Fair Debt Collection Practices
21 Act, 15 U.S.C. § 1692 *et seq.* (“FDCPA”) and the Telephone Consumer Protection
22 Act, 47 U.S.C. § 227.
23
24
25

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy;” 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States..

3. Venue is proper pursuant to 28 U.S.C. § 1391 (b)(1) and (2).

PARTIES

4. Plaintiff is a natural person residing in Fort Worth, Texas 76104.

5. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §1692a(3).

6. In the alternative, Plaintiff is a “person” granted a cause of action under the FDCPA. See §1692 (k)(a) and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec. 22, 2000).

7. Plaintiff is a “person” as that term is defined by 47 U.S.C. §153(39)

8. Defendant is a “debt collector” as that term is defined by 15 U.S.C. §1692 a(6), and sought to collect a debt from Plaintiff.

9. Defendant is a “person” as that term is defined by 47 U.S.C. §153(39).

10. At all relevant times, Defendant acted as a “debt collector” within the

1 meaning of 15 U.S.C. § 1692(a)(6), and attempted to collect a “debt” as defined by
2 15 U.S.C. § 1692(a)(5).

3
4 11. The primary purpose of Defendant’s business is debt collection.

5 12. Defendant acted through its agents, employees, officers, members,
6 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
7 representatives, and insurers.
8

9
10 **FACTUAL ALLEGATIONS**

11 13. Plaintiff has a cellular telephone.

12 14. Plaintiff has only used this phone as a cellular telephone.

13
14 15. At all relevant times, Defendant attempted to collect a consumer debt
15 and contacted Plaintiff in its attempts to collect that debt.

16 16. Upon information and belief, Plaintiff never incurred any debt in
17 connection with a business or commercial activities, and therefore the debt, if truly
18 an obligation owed by her, could only have arisen from a financial obligation
19 primarily for personal, family, or household purposes.
20

21 17. Beginning in or around August 2016 and continuing thereafter,
22 Defendant’s collectors repeatedly and continuously placed calls to Plaintiff’s
23 cellular telephone number.
24

25 18. Defendant has been calling Plaintiff regarding an unknown third

1 party named Shanice (phonetic).

2 19. Plaintiff received collection calls from telephone numbers including,
3 but not limited to (210) 293-5933. The undersigned has confirmed the number as
4 belonging to Defendant.
5

6 20. When contacting Plaintiff on her cellular telephone, Defendant used
7 an automatic telephone dialing system and/or pre-recorded voice.
8

9 21. Plaintiff knew Defendant was using an automatic telephone dialing
10 system and/or pre-recorded voice as she received calls that began with a recording
11 before she would speak with a live agent.

12 22. Defendant's calls were not placed for emergency purposes.

13 23. When the calls first began in August 2016, Plaintiff told Defendant
14 they were calling a wrong phone number and requested the calls stop.
15

16 24. Once Defendant was informed that its calls were unwanted and to
17 stop calling, there was no lawful purpose to making further calls, nor was there
18 any good faith reason to place calls.
19

20 25. Further, any continued calls could only have been placed for the
21 purpose of harassing Plaintiff.
22

23 26. However, Defendant ignored Plaintiff's request and continued to call
24 her through October 2016.

25 27. After Plaintiff's request to stop the calls was ignored by Defendant,

1 she had no other option but to install a blocking application on her cellular
2 telephone to block calls from their phone number.

3
4 **COUNT I**
5 **DEFENDANT VIOLATED §§1692d and d(5) OF THE FDCPA**

6 28. Section 1692d of the FDCPA prohibits debt collectors from engaging
7 in any conduct the natural consequence of which is to harass, oppress, or abuse
8 any person in connection with the collection of a debt.

9
10 29. Section 1692d(5) of the FDCPA prohibits debt collectors from
11 causing the telephone to ring or engaging any person in telephone conversation
12 repeatedly with intent to annoy, abuse or harass.

13
14 30. Defendant violated §§1692d and d(5) when it called Plaintiff
15 repeatedly, even though Plaintiff informed Defendant they were calling a wrong
16 number and requested their calls stop.

17
18
19 **COUNT II**
20 **DEFENDANT VIOLATED THE TCPA**

21 31. Plaintiff incorporates the forgoing paragraphs as though the same
22 were set forth at length herein.

23
24 32. Defendant initiated automated calls to Plaintiff using an automatic
25 telephone dialing system.

1 33. Defendant's calls to Plaintiff were not made for emergency purposes
2 as Defendant was attempting to contact an unknown third party.

3 34. Defendant's calls to Plaintiff, on and after August 2016, were not
4 made with Plaintiff's prior express consent.

5 35. Defendant's acts as described above were done with malicious,
6 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights
7 under the law and with the purpose of harassing Plaintiff.
8

9 36. The acts and/or omissions of Defendant were done unfairly,
10 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,
11 lawful right, legal defense, legal justification or legal excuse.
12

13 37. As a result of the above violations of the TCPA, Plaintiff has suffered
14 the losses and damages as set forth above entitling Plaintiff to an award of
15 statutory, actual and trebles damages.
16

17
18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff, SHARON HUNT, respectfully prays for a
20 judgment as follows:
21

22 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1)
23 and 47 U.S.C. §227(b)(3)(A);

24 b. Statutory damages of \$1,000.00 for each Plaintiff for the violation
25 of the FDCPA pursuant to 15 U.S.C. § 1692k(a)(2)(A);

- e. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3);
- f. All actual damages suffered pursuant to 47 U.S.C. § 227(b)(3)(A);
- h. Statutory damages of \$500.00 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3)(B);
- h. Treble damages of \$1,500.00 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3);
- i. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);
- j. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, SHARON HUNT, demands a jury trial in this case.

1 DATED: August 18, 2017

KIMMEL & SILVERMAN, P.C.

2 By: /s/Amy L. B. Ginsburg

3 Amy L. B. Ginsburg

4 Attorney for Plaintiff

5 Kimmel & Silverman, P.C.

6 30 E. Butler Pike

7 Ambler, PA 19002

8 Phone: (215) 540-8888

9 Fax: (877) 788-2864

10 Email: aginsburg@creditlaw.com